IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

DAVID GRIFFITH,)
Plaintiff,) 4:01-CV-10537
)
VS.)
)
CITY OF DES MOINES, RONALD)
WAKEHAM and JERRY COHOON)	ORDER
)
Defendants.)
)

On July 3, 2003, the Court entered an Order dismissing plaintiff's Iowa Code 91A claim and granting summary judgment in favor of defendant on all the other claims. Plaintiff filed a motion to alter or amend judgment on July 14, 2003, to which defendants replied on July 21, 2003. The matter is now fully submitted.

I. BACKGROUND

The facts of this case are set forth in the Court's previous Order and are incorporated by reference.

II. APPLICABLE LAW AND DISCUSSION

A. Iowa Code 91A

In its previous Order, the Court declined to exercise jurisdiction over plaintiff's Iowa Code

91A claim pursuant to the discretionary authority granted by 28 U.S.C. § 1367. *See Griffith v. City of Des Moines*, No. 01-10537, at 41 (S.D. Iowa filed July 3, 2003). *See also*, 28 U.S.C. § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction."). Plaintiff now seeks clarification on whether the Court intended to remand his Iowa Code 91A claim.

Defendant argues that a remand is inappropriate, because plaintiff did not raise his Iowa Code 91A claim until after defendant had removed the case to federal court. Defendant's argument is unpersuasive. The relevant inquiry is not whether this particular claim was originally filed in state court, but rather, whether plaintiff's "case" was originally before the state court. *See Hinson v. Norwest Financial South Carolina, Inc.*, 239 F.3d 611, 617 (4th Cir. 2001) (after removal of original plaintiffs' state court action, district court had inherent authority, upon settlement of the federal claim, to remand remaining state claims, although remaining plaintiffs had joined the case only after it had been removed). The Court therefore remands plaintiff's Iowa Code 91A claim to the Iowa District Court for Polk County, the forum in which the case originated.

B. Summary Judgement Standard, Disparate Treatment & Hostile Work Environment Plaintiff next argues that the Court erred in applying the standard for summary judgment. As explained in the Court's July 3rd Order, the 1991 amendments to Title VII and the United States Supreme Court's recent decision in *Desert Palace, Inc. v. Costa*, 123 S.Ct. 2148 (2003), changed the burden-shifting landscape at the summary judgment stage of employment discrimination lawsuits. Title VII plaintiffs are no longer bound by the strictures of the *McDonnell Douglas* framework. *See Dare v. Walmart*, 2003 WL 21382493, *4 (D. Minn 2003). Instead, "plaintiff must simply

demonstrate that a genuine issue of material fact exists as to whether or not race was a motivating factor in an adverse employment action [plaintiff] suffered." *Griffith v. City of Des Moines*, No. 01-10537, at 23 (citing *Dare*, 2003 WL 21382493, at *4). Plaintiff has not persuaded the Court that this summary judgment standard is erroneous. Plaintiff also asks the court to reconsider whether plaintiff has raised a genuine issue of material fact on his discrimination and hostile work environment claims. Plaintiff claims that "the [C]ourt has placed the burden on the plaintiff to, in effect, show direct evidence of racial animus to prove his claims " Plaintiff's Memorandum Of Authorities In Support Of His Motion To Alter Or Amend Order, at 3.

Contrary to plaintiff's assertion, the Court did not grant summary judgment in favor of defendant due to an absence of direct evidence. *See Dessert Palace*, 123 S.Ct. at 2154 ("Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence."). Instead, the Court granted summary judgment because, based on the direct *and* circumstantial evidence presented, no reasonable jury could find in favor of plaintiff on his discrimination and hostile work environment claims. The undisputed facts demonstrated that defendants disciplined plaintiff for legitimate reasons. Although the record contained evidence of disparaging racial comments being made at the fire department, the Court found that plaintiff has failed to show that his "workplace [was] permeated with discriminatory intimidation, ridicule, and insult that [was] sufficiently severe or pervasive to alter the conditions of [his] employment" *Harris v. Forklift Systems*, *Inc.*, 510 U.S. 17, 21. *See Griffith v. City of Des Moines*, No. 01-10537, 37-39 (S.D. Iowa filed

¹ The Court has identified a typographical error on line 19 of page 23 of its July 3, 2003 Order. *Griffith v. City of Des Moines*, No. 01-10537, at 23. The Court now replaces the word "defendant" with the word "plaintiff."

July 3, 2003). Plaintiff's motion to amend the Court's previous findings on his disparate treatment and hostile work environment claims is denied.

C. Retaliation

Lastly, plaintiff asks the Court to review its disposition of plaintiff's Title VII and Iowa Code § 216 retaliation claims. To establish a prima facie case of retaliatory discrimination, plaintiff must show that he: (1) participated in protected conduct; (2) suffered an adverse action; and (3) that the adverse action had a causal connection to the protected activity. *Buettner v. Arch Coal Sales Co., Inc.*, 216 F.3d 707, 713-14 (8th Cir. 2000). In its July 3, 2003 Order, the Court held that no reasonable jury could find that the discipline plaintiff received in August 2000, August 2001, and October 2001 was retaliatory. *Griffith v. City of Des Moines*, No. 01-10537, 33-36. Upon careful review of the record and applicable law, the Court declines to alter this ruling.

Plaintiff also alleges that defendants retaliated against him by denying his request for temporary disability benefits after he had been diagnosed with a "major depressive episode" in October 2001. See Plaintiff's Memorandum Of Authorities In Support Of His Motion to Alter Or Amend Order, at 4; Plaintiff's App. at 43. In order for the denial of benefits to qualify as an "adverse employment action" under Title VII, plaintiff must show that a genuine issue of material fact exists as to whether he was entitled to the denied benefits. See Keegan v. Dalton, 899 F.Supp. 1503, 1513 (E.D. Va. 1995); Moore v. Norfolk & Western Railway Co., 731 F.Supp. 1015, 1019 (D. Kan. 1990). For the reasons that follow, the Court finds that plaintiff has failed to meet his burden.

Plaintiff sought temporary disability benefits pursuant to his employment agreement and Iowa

Code Chapter 411.6(5)(b).² Plaintiff's employment agreement provides, in relevant part:

Leave of absence with pay shall be granted permanent employees who become incapacitated as a result of injury or occupational disease incurred through no misconduct of their own while in actual performance of duty, in accordance with rules and regulations of the Municipal Fire and Police Retirement System of Iowa.

(Defendants' App. at 178) (Labor Agreement, Article 18). Thus, in order to determine whether plaintiff qualified for contractual temporary disability benefits, the City had to determine the following: (1) whether plaintiff was injured in actual performance of duty; and (2) whether plaintiff's misconduct contributed to the injury. *Id.* at 60 (1/15/02 Turner Letter) (citing Article 18, Fire Labor Agreement). After carefully reviewing the record, the Court finds that no reasonably jury could find that plaintiff's mental injury was incurred "through no misconduct of [his] own" Defendants' App. at 178 (Labor Agreement). Because plaintiff has not shown he is entitled to disability benefits under the terms of his employment agreement, his claim that defendants retaliated against him by denying those benefits is without merit.

The final question is whether plaintiff may have been entitled to statutory benefits.

² In addition to he request for temporary disability benefits, plaintiff sought and was denied statutory disability retirement benefits with the Municipal Fire & Police Retirement System of Iowa ("MFPRSI"). Defendant's App. at 499 (2/27/01 Jacobs Letter). In rejecting plaintiff's application, the Director of the MFPRSI stated:

The basis for the denial is Iowa Code section 411.6(16)(a)(2). That section provides that a member otherwise eligible to receive a disability pension under chapter 411 shall not be eligible if 'the disability is a mental disability proximately caused by appropriate disciplinary actions taken against the member or by conflicts with a superior or coworker if the superior or coworker was acting legally and appropriately toward the member when the conflicts occurred.'

Iowa Code Chapter 411.6(5)(b)(2002) provides, in relevant part:

If a member in service or the chief of the police or fire departments becomes incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city by which the member is regularly employed, the member, upon being found to be temporarily incapacitated following a medical examination as directed by the city, is entitled to receive the member's full pay and allowances from the city's general fund until re-examined as directed by the city and found to be fully recovered or until the city determines that the member is likely to be permanently disabled.

The Iowa Supreme Court has held that mental injuries are sometimes compensable under Chapter 411.6. Moon v. Board of Trustees of the Municipal Fire and Police Retirement Sys. of *Iowa*, 548 N.W.2d 565. (Iowa 1996). However, when an alleged work injury is purely mental, the claimant has the burden to show "legal" causation as well as "medical" causation. City of Cedar Rapids v. Board of Trustees Of the Municipal Fire & Police Retirement Sys. of Iowa, 572 N.W.2d 919, 922-23 (Iowa 1998); *Moon*, 548 N.W.2d at 568-570. Medical causation simply requires a showing that the employee's injury was causally connected to his employment. City of Cedar Rapids, 572 N.W.2d at 922. In contrast, "[l]egal causation is a policy question: How far will the law extend responsibility to those consequences which have in fact been produced?" Id. In the typical mental injury case, the relevant inquiry is whether the claimant's ailment was caused by "workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer." Moon, 548 N.W.2d at 568. See, e.g., City of Cedar Rapids, 572 N.W.2d at 925 (benefits awarded to police officer for posttraumatic stress disorder that resulted from the "extraordinarily traumatic" event of watching fire victims burned to death).

After meeting with plaintiff, psychologist Thomas Peterson opined that plaintiff "has experienced significant stress related to the atmosphere of criticism in his workplace and to the difficulty he has had receiving training he has requested." Defendant's App. at 490-91. At first glance, this statement seems to establish medical causation—a link between plaintiff's ailment and his employment. However, Dr. Peterson's medical opinion was premised on the accuracy of the information plaintiff gave him. *See id.* ("Unless Mr. Griffith has omitted important facts to me or has misinterpreted the events he has described, it is my opinion . . ."). It appears that plaintiff was less than candid with Dr. Peterson, for the undisputed facts demonstrate that plaintiff received all the training he requested at the fire department. *See Griffith v. City of Des Moines*, No. 01-10537, at 25. Plaintiff himself admitted that he was fully skilled in his job by October 2000, which was an entire year before he left work on sick leave.

Defendant's App. at 309-310. Consequently, the Court finds that no reasonable jury could conclude that lack of training was a medical or legal cause of plaintiff's condition.

The Court must next consider whether the criticism plaintiff received at work could be considered the legal cause of his mental condition. Having carefully reviewed the record, the Court finds that this criticism can be classified into three main categories: comments about plaintiff's criminal charges,³ job performance and race. The Court first finds that any mental injury plaintiff suffered as a result of the comments made about his criminal charges is not compensable under the Iowa Code. *See Atascadero Unified School District v. Workers' Compensation Appeals Board*, 120 Cal. 2d 239,

³ As noted in the court's previous Order, plaintiff was charged with three counts of Sexual Abuse in the 3rd Degree in January 2000 and later pled guilty to lesser charges. When he returned to work, plaintiff's colleagues made demeaning comments about his character, calling him a pedophile, child molester and rapist. Plaintiff told Dr. Peterson about these remarks. Defendant's App. at 490.

242 (Cal Ct. App. 2002) (claimant's alleged depression from workplace gossip about her extramarital affair with co-worker was not compensable since "the nature of her duties was not the proximate cause of her injury for it merely provided a stage for the event"). Second, assuming that plaintiff suffered a mental injury as a result of the comments he received about his job performance, the Court finds that no reasonable jury could find that such injury was "caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs." *Moon*, 548 N.W.2d at 568. The undisputed facts demonstrate that plaintiff engaged in misconduct, and no reasonable jury could find that the remarks made to him regarding that misconduct were in any way out of the ordinary. Finally, as the Court previously held, plaintiff failed to produce sufficient evidence from which a reasonable jury could find that the racial comments he heard were sufficiently severe or pervasive to alter the terms and conditions of his employment. It follows that no reasonable jury could find that those comments were the legal cause of any impairment plaintiff may have suffered.

The Court finds that plaintiff has failed to create a genuine issue of material fact as to whether he was entitled to temporary disability benefits under Iowa Code Chapter 411.6(5)(b)(2002). Therefore, plaintiff's retaliation claim, which is based upon defendants' denial of those benefits, fails as a matter of law.

III. CONCLUSION

The Court denies plaintiff's motion to alter or amend its previous ruling on plaintiff's discrimination, hostile work environment, and retaliation claims. The Court remands plaintiff's Iowa Code Chapter 91A claim to the Iowa District Court for Polk County.

IT IS ORDERED.

This 6th day of August, 2003.

United States District Court